

HERZOG, H. H. T.
ASSISTANT SECRETARY OF STATE
WASHINGTON

December 23, 1958

Dear Mr. Secretary:

By now I hope you are well baked in the sun and really enjoying your rest. Jerry Greene was in the Department this morning and we had latest word of you from him.

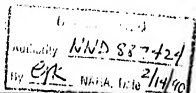
On the reply to the Soviet note, S/S sent down a copy in the envelope to you last night. It is now over in the White House for the President to look at and I expect that before the close of business tonight we will have his comments.

The French and British have forced our hand a bit in that they are distributing to the other NATO members tonight their drafts as agreed by the Working Party last Saturday in Paris but conformed to one or two minor changes which we telegraphed to London and Paris Sunday afternoon. Loftie and Martin Killenbrand did, I think, an excellent job on the text in Paris and as you will have noted I do not think it departs in any significant fashion from the text you and I went over in Paris last Thursday. On the whole I think it is an excellent response.

The schedule is for the Permanent Council to meet in Paris to discuss the drafts on December 29 with a target for delivery and publication of December 31. There will be, of course, up until the 29th the opportunity of making last minute drafting changes. I am, however, assuming that it is all right for us to move ahead according to schedule.

Please

The Honorable
John Foster Dulles,
c/o Clarence Dillon,
High Rock, Round Hill,
Montego Bay, Jamaica, B.W.I.



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Please give our love to Janet and a very
Merry Christmas to both of you.

Sincerely,

Luci

Livingston T. Merchant

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U. S. DRAFT REPLY TO SOVIET NOTE
NOVEMBER 27

1. The Government of the U.S. acknowledges the note which was addressed to it by the Government of the U.S.S.R. under date of November 27.
2. The note contains a long elaboration on the events which preceded and followed the last war. It attempts to portray the Western Powers--France, the UK and the US--as supporters of Hitlerism as against the Soviet Union. This portrayal is in sharp contrast with the actual facts. In this connection we refer to the contemporaneous statement made by the Soviet Minister of Foreign Affairs to the Supreme Soviet of the U.S.S.R. on October 31, 1939. In that statement he refers, among other things, to the "conclusion of the Soviet-German non-aggression pact of August 23" and points out "We now had a rapprochement and the establishment of friendly relations between the U.S.S.R. and Germany". The statement goes on to assail the British and French Governments for their opposition to Hitlerism in the following language: "The ruling circles of Britain and France have been lately attempting to depict themselves as champions of the democratic rights of nations against Hitlerism, and the British Government has announced that its aim in the war with Germany is nothing more nor less than the 'destruction of Hitlerism'---everybody will understand that an ideology cannot be destroyed by force, that it cannot be eliminated by war. It is therefore not only senseless, but criminal to wage such a war--a war for the 'destruction of

Hitlerism!

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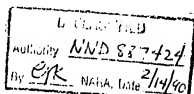
'Fascism', camouflaged as a fight for 'democracy'.

3. The situation of Berlin of which the Soviet Government complains and which it considers abnormal is a result of the very nature of the German problem such as it has existed since 1945. When the empire of Hitler collapsed the Western Allies were in military possession of more than one-third of what is now the Soviet Zone of Germany. The Soviet Union was in possession of Berlin. As a result of the agreements of September 12, 1944, and May 1, 1945, the Western Allies withdrew and permitted a Soviet occupation of large parts of Mecklenburg, Saxony, Thuringia and Anhalt. In return the Soviet Union granted the three Western Powers sectors in West Berlin, then an area of rubble.

4. The Soviet Union has directly and through its puppet regime-- the so-called German Democratic Republic--consolidated its hold over the large areas which the Western Allies relinquished to it. It now demands that the Western Allies should relinquish the positions in Berlin which in effect were the agreed quid pro quo.

5. The three Western Powers are there as occupying powers and they are not prepared to relinquish the rights which they acquired through victory just as they assume the Soviet Union is not willing now to restore to the occupancy of the Western Powers the position which they had won in Mecklenburg, Saxony, Thuringia and Anhalt and which under the agreements of 1944 and 1945 they turned over to the disposition of the Soviet Union.

6. The agreements

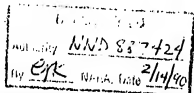


6. The agreements made by the Four Powers cannot be considered obsolete because the Soviet Union has already obtained the full advantage therefrom and now wishes to deprive the other parties of the compensating advantages. These agreements are binding upon all of the signatories so long as they have not been replaced following free negotiation.

7. Insofar as the Potsdam Agreement is concerned, the status of Berlin does not depend upon that agreement. Moreover, it is the Soviet Union that bears responsibility for the fact that the Potsdam Agreement could not be implemented.

8. The Soviet memo purports formally to repudiate the agreements of September 12, 1944 and May 1, 1945. This repudiation in fact involves other and more recent engagements. We refer in this connection to the Four Power agreement of June 21, 1945 whereby, among other things, the Soviet Union assumed "an obligation" to assure the normal functioning of transport and communication between Berlin and the Western zones of Germany. This "obligation" the Soviet Union now purports to shed. The United States also refers to the "Summit" Agreement of July 23, 1955 whereby the Four Powers recognized "their common responsibility for the settlement of the German question", a phrase which necessarily included the problem of Berlin. Apparently the Soviet Union now attempts to free itself from these agreed responsibilities and obligations.

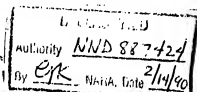
9. The United States Government cannot prevent the Soviet
Government



government from announcing the termination of its own authority in the quadripartite regime in the sector which it occupies in the city of Berlin. On the other hand, the Government of the United States will not and does not, in any way, accept a unilateral denunciation of the accords of 1944 and 1945, nor is it prepared to relieve the Soviet Union from the obligations which it assumed in June 1949. Such action on the part of the Soviet Government would have no legal basis, since the agreements can only be terminated by mutual consent. The Government of the United States will continue to hold the Soviet Government directly responsible under existing agreements. As the Soviet Government knows, the French, British and U. S. Governments have the right to maintain garrisons in their sectors of Berlin and to have free access thereto. Certain administrative procedures have been agreed with the Soviet authorities accordingly and are in operation at the present time. The Government of the U.S. will not accept a unilateral repudiation on the part of the Soviet Government of its obligations in respect of that freedom of access. Nor will it accept the substitution of the German authorities in the Soviet Zone for the Soviet Government in this respect.

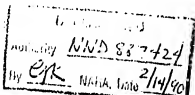
10. In the view of the Government of the U. S., there can be no "threat" to the Soviet Government or the German regime in the Soviet zone from the presence of the French, British and U. S. garrisons in Berlin. Nor can there be any military threat from

Berlin to



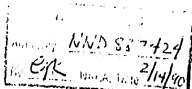
Berlin to the Soviet Government and the regime in the Soviet zone. The forces of the three Western Powers in Berlin number about ten thousand men. The Soviet Government, on the other hand, is said to maintain some three hundred and fifty thousand troops in the Eastern zone of Germany, while the regime of the Soviet occupied zone is understood also to maintain over two hundred thousand men under arms. Under these circumstances, the fear that the Western troops in Berlin may "inflict harm" appears to be wholly unfounded. If Berlin has become a focus of international tension, it is because the Soviet Government has deliberately threatened to disturb the existing arrangements at present in force there, arrangements to which the Soviet Government is itself a party. The inhabitants of West Berlin have recently reaffirmed in a free vote their overwhelming approval and support for the existing status of that city. The continued protection of the freedom of more than two million people of West Berlin is a right and responsibility solemnly accepted by the three Western Powers. Thus the United States cannot consider any proposal which would have the effect of jeopardizing the freedom and security of these people. The rights of the three powers to remain in Berlin with unhindered communications by surface and air between that city and the Federal Republic of Germany are under existing conditions essential to the discharge of that right and responsibility. Hence the proposal for a so-called "free city" for West Berlin, as put forward by the Soviet Union, is unacceptable.

11. As is stated



11. As is stated in the Soviet Government's note of November 27, it is certainly not normal that thirteen years after the end of the war there should still remain in a part of German territory a system of occupancy instituted in 1945. The United States deplores this fact and the fact that Germany has not yet been reunified so that Berlin might resume its rightful position as capital of a united Germany. If a Treaty of Peace, which alone can bring an end to this situation, has not been concluded with a reunited Germany, the responsibility in no way rests with the three Western Powers, which have not spared any effort to bring the Four Powers out of the impasse where they have so long found themselves. Pending the conclusion of a peace treaty' the present situation continues.

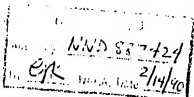
12. In reality, the form of government in Berlin, the validity of which the Soviet Government attempts to contest today, is only one aspect; and not the essential one' of the German problem in its entirety. This problem, which has often been defined, involves the well-known questions of reunification and European security, as well as a peace treaty. It has in the past been discussed without success in the course of numerous international meetings with the Soviets. The Government of the United States has always been and continues today to be ready to discuss it. The United States made clear this readiness in its note to the Soviet Union of September 30, 1958, in which it was stated "the Government of the United States is ready at any time to enter into discussions with the Soviet Government



Government on the basis of these proposals (i.e., the Western Proposals for a free all-German Government) or of any other proposals genuinely designed to insure the reunification of Germany in freedom, in any appropriate forum. It regards the solution of the German problem as essential if a lasting settlement in Europe is to be achieved." The Soviet Union has not yet seen fit to reply to this note.

13. Public repudiation of solemn engagements, formally entered into and repeatedly reaffirmed, coupled with an ultimatum threatening unilateral action to implement that repudiation unless it be acquiesced in within six months, would afford no reasonable basis for negotiation between sovereign states. The Government of the United States could not embark on discussions with the Soviet Union upon these questions under menace or ultimatum; indeed, if that were intended, the United States would be obliged immediately to raise a protest in the strongest terms. Hence, it is assumed that this is not the purpose of the Soviet note of November 27 and that the Soviet Government, like itself, is ready to enter into discussions in an atmosphere devoid of coercion or threats.

14. The United States Government would be interested to learn whether the Soviet Government is ready to enter into discussions upon this basis by the Four Powers concerned. It would be the object of the Government of the United States to discuss the question of Berlin within the general framework of negotiations for a solution of the German problem



German problem as a whole. The United States Government would welcome the views of the Soviet Government at an early date.

